



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 29<sup>TH</sup> DAY OF APRIL, 2026**

**BEFORE**

**THE HON'BLE MRS. JUSTICE P SREE SUDHA**

**REGULAR FIRST APPEAL NO. 634 OF 2011 (DEC/INJ)**

**BETWEEN:**

SMT SABIHA BANU R  
W/O BASHEER ALI  
AGED ABOUT 46 YEARS,  
R/AT NO.69, KACHARAKANAHALLI  
ST.THOMAS TOWN POST,  
BANGALORE-84.

...APPELLANT

(BY SRI.M.D. RAGHUNATH., ADVOCATE)

**AND:**

1. SMT SARASWATHAMMA H  
MAJOR, AGE NOT KNOWN  
TO THE APPELLANT  
W/O H. NARAYAN
2. SRI H NARAYAN  
S/O LATE SRI OBALAPPA  
AGED ABOUT 67 YEARS,  
SINCE DECEASED  
LEGAL REPRESENTATIVES ARE
  - 2A. SMT. UMA .N  
D/O LATE H NARAYAN  
AGED ABOUT 46 YEARS
  - 2B. SMT. MANJULA .N  
D/O LATE H. NARAYAN  
AGED ABOUT 42 YEARS





ALL ARE RESIDING AT NO.5,  
4<sup>TH</sup> CROSS, 3<sup>RD</sup> MAIN,  
V.R. PURAM, PALACE GUTTAHALLI,  
BENGALURU-560 003.  
AMENDED AS PER VIDE COURT  
ORDER DTD:25.04.2017.

3. SRI H ESHWAR  
S/O SRI.H.NARAYAN  
MAJOR, AGE NOT KNOW  
TO THE APPELLANT

ALL ARE R/A NO.33,  
2<sup>ND</sup> MAIN ROAD,  
PALACE GUTTAHALLI,  
BANGALORE-3

...RESPONDENTS

(BY SRI. P M NARAYANASWAMY., ADVOCATE,  
R2(A), R2(B) ARE SERVED AND UNREPRESENTED)

THIS RFA IS FILED U/SEC.96 OF CPC, AGAINST THE  
JUDGMENT AND DECREE DATED: 16.09.2010 PASSED IN  
O.S.16066/2003 ON THE FILE OF THE IV-ADDL. CITY CIVIL  
AND SESSIONS JUDGE, MAYO HALL UNIT, BANGALORE,  
PARTLY DECREETING THE SUIT FOR THE PERMANENT  
INJUNCTION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON  
17.03.2026 COMING ON FOR PRONOUNCEMENT OF JUDGMENT  
THIS DAY, **P SREE SUDHA J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE P SREE SUDHA



### **CAV JUDGMENT**

This appeal is filed by the appellant under section 96 of CPC for setting aside the judgment passed by IV Addl. City Civil and Sessions Judge, Mayo Hall, Bengaluru in O.S.No.16066/2003 dated 16.09.2010.

2. The plaintiff filed the present suit against defendants Nos.1 to 3 contending that he acquired suit schedule property under a registered sale deed dated 19.04.2003 and that the Khata has since been duly transferred to his name. The plaintiff submits that she has been in lawful possession and enjoyment of the suit schedule property from the date of purchase and has been regularly paying the applicable tax. It is further stated that the suit schedule property originally belonged to defendant No.1. Subsequently, the defendant No.1 entered into an agreement of sale with Zahrunnissa. After receiving entire sale consideration from Zahrunnissa, defendant No.1 executed General Power of Attorney dated 10.01.1989 in



her favour in respect of the suit schedule property. The plaintiff claims to have purchased the said property through the said Zahrunnissa acting as GPA Holder. The defendants have neither title nor possession over the suit schedule property, however, they attempted to interfere with and trespass upon the said suit schedule property, thereby compelling the plaintiff to institute the present suit.

3. Defendants further contended that the plaintiff is a stranger to the suit schedule property and is neither the owner nor has any right, title, or interest therein. It is alleged that the plaintiff has created false and fabricated documents to support his claim. The defendants further stated that defendant No.2 is the absolute owner in possession of the suit schedule property, having purchased the same under a registered sale deed dated 13.03.1986. It is specifically denied that defendant No.1 ever executed any agreement of sale or General Power of Attorney in favour of Zahrunnissa and it is contended that the said



Zahrunnissa had no authority whatsoever to deal with or execute any document in respect of the suit schedule property. It is also submitted that defendant No.2 has initiated eviction proceedings in HRC No.517/2003 against Rehman, the alleged tenant and father of the plaintiff and the said proceedings are still pending. Further, defendant No.2 had mortgaged the suit schedule property with his department during his service and obtained a loan, thereby evidencing his ownership and possession, therefore requested the court to dismiss the suit.

4. The defendants further contended that the plaintiff is only a tenant in the suit schedule property and is merely an occupant. In order to substantiate his case, the plaintiff examined witnesses as PW1 and PW3 and marked Exs.P1 to P17. On the other hand, defendant No.2 examined himself as DW1 and produced documents marked as Exs.D1 to D13. Upon consideration of the entire oral and documentary evidence on record, the Trial Court partly decreed the suit in favour of the plaintiff. The



defendants were restrained from interfering with the plaintiff's possession of the suit schedule property and were further restrained from taking possession pursuant to the order in HRC No.517/2003, except by due process of law. It is further stated that the suit for declaration of title and for declaration of sale deed dated 13.03.1986 is not binding on the plaintiff, was dismissed. Aggrieved by the said judgment and decree, the present appeal has been preferred by the plaintiff.

5. The plaintiff further contended that the appellant and her family members have been in continuous possession of the suit schedule property since November 1985, pursuant to an agreement executed by defendant No.1 in favour of the appellant's mother. The court ought to have decreed the suit in toto. Entire sale consideration of Rs.30,000/- was paid by the mother of the appellant to the respondent No.1. It is further urged that defendant No.1 was not examined before the Court, and therefore there was no valid reason, to disbelieve the evidence of



the plaintiff and her witnesses, PW2 and PW3. The plaintiff asserted that the defendant No.1 executed the agreement of sale (Ex.P1), General Power of Attorney (Ex.P2), and affidavit (Ex.P3) in favour of Zahrunnissa, and that possession of the suit schedule property was delivered to her on the date of the agreement. Plaintiff proved that she is in lawful possession of the suit schedule property from the date of purchase under Ex.P1 dated 19.04.2003 and thus the trial court ought to have granted declarative relief in her favour. The sale deed dated 13.03.1986 executed by defendant no.1 in favour of defendant no.2 who is none other than her husband, is only to defeat the rights of the appellant and her mother and it is not binding on them. The plaintiff also contended that the signatures of H. Saraswathamma (defendant No.1) on the said documents do not tally, and that this aspect was not properly considered by the Trial Court. It is argued that although the Trial Court held that the GPA and affidavit do not confer title upon Zahrunnissa to execute a



sale deed in favour of the appellant, it failed to appreciate that defendant No.1 was not examined to rebut the presumption under Section 85 of the Evidence Act. Further, despite the production of documents executed in favour of the appellant's mother, defendant No.1 did not enter the witness box to deny the same. However, the court dismissed other reliefs. There are no other documents produced by respondents to prove that there is relationship of landlord and tenant between appellant's father and respondent No.2. The appellant and her family members have been residing in the suit schedule property since 1985 without interference, until respondent No.2 initiated proceedings in HRC No.517/2003 against the appellant's father, which came to be dismissed. On these grounds, it is urged that the Trial Court erred in dismissing the relief of declaration and that the suit ought to have been decreed in its entirety.

6. It was further contended that the khatha of the suit property stands in the name of the appellant and that





she is paying taxes regularly upto date, the same was admitted by respondent no.2. Even in the corporation records, name of the appellant is reflected. Respondent No.2 has neither paid any taxes in respect of the suit property nor does the khatha stands in his name. Despite these admitted facts, the trial court failed to grant the relief of declaration. Therefore, requested this court to set aside the judgment and decree of the trial court.

7. Sabiha Banu/plaintiff who filed suit against Saraswathamma/defendant No.1, her husband H.Narayan-defendant No.2 and their son H.Eshwar-defendant No.3. The plaintiff contended that she is the absolute owner of the immovable property bearing new cooperation No.72, Gramatana Kacharakanahalli Bangalore North, bounded by,

East: Nanjundappa's house  
West: Road,  
North: Narayanappa and his brother's house  
South: Muniswamy Reddy's house

(hereinafter referred to as suit schedule property)



8. It was further contended that she acquired the said property under a registered absolute sale deed dated 19.04.2006, registered as document No.1710/03-04 stored in CD No.121 in the Office of Sub-Registrar, Bangalore North. Subsequently, the khata was transferred and registered in the name of the plaintiff and she has been paying property taxes to the Bangalore Mahanagara Palike, Ward No. 89. It was further contended that she is in peaceful and undisturbed possession and enjoyment of the suit schedule property as the absolute owner and she produced the original sale deed, tax paid receipts and khata certificate, before the Court. She further stated that originally defendant No.1 was the owner of the suit schedule property. Defendant No.1 entered into an agreement of sale with Zahrunnissa after receiving the entire sale consideration and also executed GPA and affidavit dated 10.01.1989, thereby relinquishing her ownership right, title and interest in the property and delivering possession in favour of Zahrunnissa.



Thereafter, Zahrunnissa acting upon the GPA executed by defendant no.1, executed the sale deed in favour of the plaintiff. It was further contended that the defendants are complete strangers to the suit schedule property and have no manner of right, title or interest over the same. Despite this, they are attempting to trespass upon the suit schedule property and illegally dispossess the plaintiff with an intention to wrongfully grab the property. The plaintiff further stated that she had lodged a complaint before the jurisdictional police, who warned the defendants not to interfere with her peaceful possession and enjoyment of the property. However, as the defendants are influential persons possessing money, manpower, and political influence, the police advised the plaintiff to approach the Civil Court, observing that the dispute was civil in nature. As such, they filed suit seeking a decree of permanent injunction restraining the defendants from trespassing into suit schedule property and stated that cause of action arose on 27.07.2003 when defendants attempted to



trespass into the suit schedule property and interfere with her peaceful possession and enjoyment. Further contended that defendant No.2 during the pendency of the proceedings filed a frivolous petition against her father Rehman G.A. in HRC No.517/2003 before the Principal Judge, Small Cause Court, Bengaluru, without impleading her as a party and is attempting to take possession of property illegally.

9. It is further contended that the defendant No.2 is claiming ownership over the suit schedule property on the basis of fabricated documents, including a sale deed dated 13.03.1986 and as per the plaintiff it is not binding on her. Further, she prayed for an order restraining the defendants from taking possession of suit schedule property pursuant to the orders in HRC No.517/2003 till the disposal of the suit.

10. In a written statement filed by the defendants, they denied all the averments made in the plaint. The defendants contended that the plaintiff is a complete



stranger to the suit schedule property and has no manner of right, title, or interest over the same. It is further contended that the defendant No.2 is the absolute owner of the suit schedule property by virtue of a registered sale deed, dated 13.03.1986 registered under document No.617/85-86, Book No. 1, Volume No.3839, at pages 229 to 233 in the Office of Sub-Registrar of Bangalore North Taluk and the said sale deed was also produced before the court.

11. The defendants further stated that the plaintiff had fraudulently created registered sale deed registered as No.1710/03-04 stored in CD No.121 dated 19.04.2003 with an intention to block the property in order to knock away the valuable property. They alleged that she is liable for punishment under sections 463 to 474 of IPC. It was specifically contended that the plaintiff was neither the owner nor in possession of the property at any point of time. They further asserted that the defendant No.1 was not at all owner of the suit schedule property as on



10.01.1989 and therefore, the question of executing the said documents, does not arise. The plaintiff and her mother Zahrunnissa created the GPA and affidavit with a fraudulent intention to grab the suit schedule property. As per Section 8 of the Transfer Property Act, 1982, a vendor cannot convey a better title than what he himself possesses. As such, they alleged transfer was made with a fraudulent intention under Section 53 of Transfer of Property Act, 1982 and the alleged sale deed itself is void and has no legal sanctity.

12. Defendant No.2 filed HRC No.517/2003 seeking eviction of the tenant and it is pending for consideration. The plaintiff was tenant under defendant No.2 on a monthly rent of Rs.600/- exclusive of electricity charges. Defendant no.2 is a retired Government Servant from the Defense Services. During his tenure of service, he mortgaged the property with Ministry of Defense and subsequently discharged the loan and obtained NOC for having discharged the loan and also filed relevant



documents. He further denied the allegations made in the complaint which was lodged by the plaintiff. It was further, contended that when defendant No.2 insisted upon the plaintiff and her family members to vacate the suit schedule property, plaintiff and her parents picked up quarrel with him, and without paying the arrears of rent or vacating the suit schedule property, they approached the police with a fraudulent intention to harass them. As such, the suit filed by the plaintiff for injunction, is not maintainable. No cause of action arose for the suit on 27.07.2003 as alleged in the plaint. The alleged cause of action is imaginary and fictitious and the suit had been filed only with an intention to avoid eviction proceedings and thus requested the court to dismiss the suit.

13. An additional written statement was filed by defendant no.1 and 2 wherein it was contended that they had filed HRC petition much prior to the filing of the suit for eviction. The said HRC petition was filed against the G.A.Rehman/father of the plaintiff. The plaintiff had filed



an application for impleading of the said proceedings, but it was dismissed on the ground that she is neither a proper nor a necessary party to the proceedings. It was also contended that the plaintiff had filed private complaint against the defendants.

14. He further contended that defendant No.2 is the absolute owner of the property, having purchased the same under a valid registered conveyance deed. The father of the plaintiff was only a tenant in the suit schedule property. Taking undue advantage of their long residency, in the property, the plaintiff and her parents allegedly created documents by forging the signature of the respondent No.1 with an intention to grab the valuable property. It was specifically contended that as on the date of execution of the alleged documents. Defendant No.1 was not the owner of the property.

15. The defendants further contended that the present suit has been filed only for the relief of bare injunction. According to them, no sale deed was ever





executed by the defendants and no sale consideration had passed between the parties. It was also contended that the amendment sought by the plaintiff, seeking a declaration that the order passed in HRC No.517/2003 is not binding on her, is not maintainable in law, as she cannot seek an order restraining or nullifying the effect of an order passed by a competent court. Further, it is was contended that the sale deed executed by defendant No.1 in favour of defendant No.2 cannot be cancelled or set aside in this appeal and the said amendment sought in the plaint is not maintainable in law.

16. In her cross-examination, the plaintiff reiterated the averments made in the plaint. She stated that at the time of execution of the agreement in the year 1986, she was aged about 24 years and that Ex.P16 came to be executed on that date. She further deposed that, at the time of execution of Ex.P16, Saraswathamma and Narayan were present. According to her, a sum of Rs.12,000/- was paid by her parents to Saraswathamma as advance sale



consideration on the date of execution of Ex.P16, and possession of the property was also delivered to them. She further stated that the Possession was taken by them and Rs.10,000/- was paid towards balance consideration during 1985 and again they paid Rs.5,000/- during 1985-86, however, she could not specify the exact month in which the balance consideration was paid. She also stated that the balance sale consideration was paid at the house of her uncle and that the sale consideration was paid in two installments.

17. She further admitted that there is no endorsement regarding payment of Rs.5,000/- under Ex.P16. She also admitted that she had not issued any notice to Saraswathamma calling upon her to execute the sale deed; however, she stated that her mother had personally requested Saraswathamma at her residence to execute the same. She further admitted that, in the eviction proceedings initiated by Defendant No.2, she had filed an application seeking to implead herself as a party,



but the said application was dismissed. She also admitted that the defendants had filed criminal case against her and her parents alleging forgery and that the said case is still pending for consideration. PW2 is the brother of plaintiff deposed that he was present in the office of Sub Registrar Bangalore, North, on the date of registration of the sale deed. He further stated that he had signed the GPA as well as the sale deed as an attesting witness. He identified his signature on the sale deed marked as Ex.P1(a). In the cross-examination, PW2 admitted that he knows all the defendants since 1989. He stated that he along with his parents and sister were residing in the said property bearing House No.69, from the year 1989 till his marriage in the year 1993. He further deposed that he along with his sister were present when defendant No.1 executed said GPA in the house of his uncle in the year 1989. According to him, his mother paid Rs. 12,000/- to the defendant No.1 at the time of execution of the document, he admitted that he did not know the actual sale



consideration amount. He further stated that his uncle Kareem Khan is no longer alive and he does not know when the khata was changed in the name of his mother. He further admitted that he was aware of filing of HRC No.517/2003 against his father.

18. PW3/Zahrunnissa-mother of the plaintiff deposed that the defendant No.1 executed GPA 10.01.1989 after receiving Rs.30,000/- from her towards full sale consideration and that the entire sale consideration amount had been paid. She further stated that they are in possession of the property from 10.01.1989 onwards and defendants have no manner of right, title, or interest over the property. Accordingly to her, Khata of the property stands in her name and she has been paying taxes in respect of the same. She further stated that electricity and water meter connection also stand in her name. She executed sale deed in favour of her daughter. She identified Ex.P1 as the sale deed and



she admitted her signature as Ex.P1 (a) to Ex.P1 (k) appearing on each page of the said document.

19. In her cross-examination, PW3 stated that she knows all the defendants from past 25 years and that she has been residing in the suit schedule property from the last 23 years. She further deposed that she verified the title deeds of Saraswathamma prior to execution of power of attorney. According to her, the document was executed in the year 1985 in the presence of Narayan. She further stated that she and her husband and their advocate were also present at the time of execution of the said document and that she and her husband signed the document executed by defendant No.1 and paid Rs.31,000/- to the defendant No.1 in three installments towards sale consideration. Further, PW3 deposed that her daughter paid Rs.1,64,000/- to her, towards the sale consideration under the sale deed executed in favour of the plaintiff. She admitted that the defendants were not present at the time of execution of the sale deed in favour of her



daughter. Further stated that sale deed, khatha certificate, and tax paid receipts had already been produced before the City Civil Court in another case.

20. Defendant No.2 was examined as DW1. He deposed that he is absolute owner of the property by virtue of a registered sale deed dated 13.03.1986. He further stated that he has been in possession of the property and has been paying taxes to the concerned Panchayath Authorities. According to him, the property initially fell within the jurisdiction of the BBMP, but yet to be transferred to the revenue records from the BBMP authorities. He further alleged that, during the said period, the plaintiff created the alleged documents and obtained khata and other revenue records on the basis of an invalid sale deed. DW1 further deposed that he is a retired Government employee from Defence Services. He further stated that he mortgaged the property to the Ministry of Defence and later it was discharged after obtaining NOC. He further stated that, thereafter, he insisted the father of



plaintiff to vacate the property. DW1 further contended that Defendant No.1 was not at all owner of the suit schedule property and therefore, the question of execution of the documents dated 10.01.1989 does not arise. He further stated that the plaintiff herself has no manner of right, title or interest in respect of the suit schedule property and the said documents are fabricated and created documents. The said documents are created after filing HRC No.517/2003. He further stated that the said HRC proceedings contested by plaintiff was dismissed and aggrieved by the same, she preferred appeal in HRRP No.181/2007, which also came to be dismissed on 29.08.2007. Ex.D1 is the certified copy of the sale deed dated 13.03.1986 and Ex.D2 is mortgaged deed dated 22.03.1990. Ex.D3 is the re-conveyance deed and Ex.D8 is the certified copy of the mortgage. He further stated that his wife had purchased the suit schedule property in the year 1973. During the cross examination, it was suggested that Ex.D7 was concocted document for the



purpose of the case. He also denied the other suggestions made regarding the execution of documents in favour of plaintiff. Upon consideration of the aforesaid oral and documentary evidence available on record, the Trial Court partly decreed the suit by granting the relief of permanent injunction in favour of the plaintiff and dismissed the other reliefs sought for in the suit.

21. Learned counsel for the appellant relied upon the citation reported in **SLP © No.13917/2009** .dated 11.10.2011 in case **Suraj Lamp and Industries Pvt Ltd., Vs State of Haryana and Ors,**

*17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.*





*18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.*

22. The plaintiff sought for the relief by way of amendment stating that the proceedings in HRC No.517/2003 is not binding on her and to restrain the defendants from taking possession as per the said orders



till the disposal of the suit. Admittedly she approached the HRC No.517/2003 requesting them to implead her but her application was dismissed against which she also filed an appeal in HRRP No.181/2007 and it was also dismissed on 29.08.2007. As such, she is not a party to the proceedings in the HRC No.517/2003.

23. Whether appellants are entitled for declaration of title in respect of the suit schedule property as claimed by them?

Ex.P1 is absolute sale deed dated 19.04.2003 executed by Saraswathaamma represented by her GPA holder Zahrunnissa as vendor in favour of Saheba Banu, purchaser for an a sale consideration of Rs.1,64,000/-, as she acquired the title by way of registered deed of sale dated 10.10.1973 which is registered as Document No. 1993/73-74 in pages 184 to 186 in Volume No.2883 of Book 1 by Sub Registrar, Bangalore North Taluk. In the said document, it was specifically mentioned on the same day, physical vacant possession of the suit schedule



property was given to the purchaser and the suit schedule property bearing No.72, Khatha assessment No. 1733/1, house list No. 1680 situated at Kacharakanahalli, Kasaba Hobli, Bangalore North, along with land open spaces and structures thereon, Measuring east to west '13' feet, north to south '28' feet. Bounded on the

East : By Nanjundappa house,

West : By road,

North : By Narayanappa and his brother's house,

South : By Muniswami Reddy house.

Ex.P2 is GPA executed by Saraswathamma in favour of Zahrunnissa authorising her to sell the property to any prospective buyer and to execute registered sale deed in respect of suit schedule property. Ex.P3 is an affidavit executed by Saraswathamma wherein it is stated she had sold the suit schedule property to Zahrunnissa wife of G.A.Rehman for a total sale consideration of Rs.30,000/- and that she had received entire amount towards full and



final settlement and the purchaser is absolute owner of suit schedule property.

24. She also admitted that she executed GPA in favour of the purchaser and she shall execute the sale deed as and when she was called to do so. She also handed over original documents of title to the purchaser and delivered vacant position. Ex.P6 to Ex.P10 are Khata Extracts. Ex.P11/Electricity Bill, Ex.P12/Letter addressed by the BESCO. Ex.P13 & Ex.P14 are water bills and Ex.P15/the application submitted by PW1 to BWSSB. Ex.P16 is the agreement of sale executed by Saraswathamma on 21.11.1985, for a consideration of Rs.30,000/- and it is stated that she received Rs.12,000/-. It was further stated that the registration, finalization and completion of the suit schedule property shall be completed on or before 6 months from the date of entering into the agreement. The agreement further provides that , in the event if the vendor fails to execute the sale of suit schedule property on the aforesaid time,



the vendor shall refund the earnest money together with an equal amount towards liquidated damages. If the purchaser fails to purchase the suit schedule property on the stipulated time, earnest money paid to the vendor remains forfeited with the vendor and purchaser shall have no claim on the suit schedule property. In the concluding portion of the agreement, in addition to the initial amount of Rs. 12,000, a further sum of Rs.10,000 was paid on the same day i.e. Rs.22,000/- and she received it from Zahrunnissa on 11.03.1986. It is also mentioned that further advance of Rs. 2,000/- was subsequently paid in addition to Rs.22,000/-, thereby showing a total sum of Rs.24,000/- has been paid. Ex.D8 is the certified copy of the order in HRC No.517/2003

25. Further, Ex.D11 is the certified copy of sale deed dated 13.03.1996 on which second respondent is relying upon, which was executed by defendant No.1 in his favour. Ex.D2 is the supplementary deed dated 22.03.1990 and Ex.D3 is the form of reconveyance deed.



Ex.D4 is notice given by defendant No.2 to the father of plaintiff on 07.08.2003 in which it is stated that he was the tenant in the said suit schedule property paying monthly rent of Rs.600/- and alleges that the tenant was a chronic defaulter who had not paid rent since February 2002 and thus instructed him to make an vacate suit schedule property. It is further submitted that there are arrears of rent pending from February 2002 till July 2003 i.e. Rs.10,800/- and he intended to reside in the said house due to his ill health. Ex.D5 is the postal acknowledgement. The certified copy of the order sheet in HRC No.517/2003 marked at D6. Ex.D8 mortgage deed in form No. 3A at an amount of Rs. 45,500/-. He also filed Exs.P9-Khatha extracts to Ex.P11/Electricity bills and sale deed dated at Ex.D10 dated 24.05.1972 and 25.09.1965 and the Encumbrances Certificate under Ex.D12. Mahalakshamma and Shyamanna as vendors had executed sale deed in favour of Umadevi purchaser for a sale consideration of Rs.6,000/-, out of which Rs.1,000/-



is paid as advance and Rs.5,000/- was paid on 02.05.1973 at the Sub-Registrar Office. Ex.D11 is a sale deed executed in favour of Saraswatharma on 10.10.1973.

26. The plaintiff relied upon the deed of absolute sale deed dated 19.04.2003 and the GPA dated 10.01.1989 and the affidavit given by Saraswathamma in their favour and also executed Ex.P16/Agreement of sale deed dated 19.11.1985. They claimed title over the suit schedule property relying upon the said documents. Whereas the second respondent stated that his wife/first respondent executed registered sale deed in his favour on 13.03.1986. Later he mortgaged the suit schedule property to his department.

27. The plaintiff and Zahrunnissa in their evidence clearly stated at the time of execution of sale deed and GPA, respondent No.2 was also present along with his wife. Respondent No.1 is the proper person to depose regarding the execution of the said documents. But she was not examined before the Court, for the reasons best



known to defendant No.2. Saraswathamma clearly stated that it was her property as per registered sale deed dated 10.10.1973 i.e., Ex.D11. The main contention of the respondent No.2 is that the sale deed was executed in his favour in the year 1986 and as on the date of execution of GPA, she has no right, title or interest on the said property. Thus either the GPA or the deed of absolute sale deed dated 19.04.2003 are not valid. Further, when he filed the HRC, No.517/2003, against father of plaintiff, in the year 2003, stating that he has not paid rents from February 2002 till the date of filing the HRC for an amount of Rs.10,000/-.

28. In the said order it was observed that the court cannot decide the genuineness of the document and in the absence of obtaining declaration from the competent court, it is not possible to hold that whether there exists relationship of landlord and tenant between the parties, thus directed them to approach the competent court of civil jurisdiction for declaration of their rights.





29. The plaintiff had filed an application under Order 1 Rule 10 CPC for impleading her in the said proceedings, it was dismissed, against which she preferred HRRP No.191/2007 and it was also dismissed. In the suit before the trial Court it was contended by the first and second defendants that the relief of declaration is barred by limitation, as it is not sought for at the time of filing the suit and it was sought for, only by way of amendment in the year 2008. But the application filed for amendment for declaration was allowed on 28.08.2008, unconditionally on payment of costs of Rs.1,000/-. Therefore, the amendment dates back to the date of filing of the suit.

30. The plaintiff and his family members are residing in the suit schedule property from 1985 onwards as the possession was also delivered on the said date. The entire sale consideration was received as per the affidavit filed under Ex.P3. But GPA was executed in the year 1989 and in pursuance of the same Zahrunnissa sold the property to her daughter/plaintiff on 19.04.2003. Second defendant



kept quiet from 1986 till 2003 and only in the year 2003 he filed HRC proceedings against father of plaintiff seeking eviction from the suit schedule property. Under the agreement of sale marked at Ex.P16, the entire sale consideration is to be paid within 6 months. The agreement also clearly provided the consequences in the event of default by either the vendor or the purchaser and specified the remedies available to each party. Plaintiff filed khatha extract to show transfer of property in her name and also filed tax receipts, water and electricity bills but defendant No.2 has not filed any such documents.

31. Defendant No.2 did not issue any notice to the GPA holder, nor he has taken any steps to cancel the agreement of sale executed way back in the year 1985 under Ex.P16. Even after execution of sale deed in his favour in the year 1986, only when Zahrunnissa executed sale deed in favour of her daughter, namely the plaintiff, in the year 2003 Defendant No.2 instituted HRC proceedings contending that the plaintiff and her family



members were tenants in the suit schedule property. But he has not filed any lease agreement or any rental vouchers, to show regarding payment of rents from 1985 onwards, as he alleged default from February 2002 only. He mainly contended that he also mortgaged the said property in his department. However, the property stated to have been mortgaged to his department is entirely different from the property sold to the plaintiff herein.

32. The description of the suit schedule property is different from the property mortgaged by defendant No.2 to his department. The description of the property mortgaged is as below,

*All plot of house with  
land bearing No.72 having an  
area of 17.67 square meters  
with all easements,  
appurtenances, right of way,  
passage situated Gramatana  
Kacharakanahally, Bangalore  
North Taluk and bounded as  
below,*

*North : Reddy's site  
South: Laxminarayanappa's  
house*



*East: 25 feet road*  
*West: Narayanappa's house*

The description of the suit schedule property in respect of which Ex.P-16 agreement of sale, Ex.P-2/GPA and Ex.P-3 affidavit are executed is as below,

*All that piece and parcel of land bearing No.72 of Gramatana, Kacharakanahalli, Bangalore North Taluk, Bangalore, bounded on;*

*East: Nanjundappa's house*  
*West: Road*  
*North: Narayanappa and his brother's house*  
*South: Muniswamy Reddy's house*

*Measuring East to West 30 feet, North to South 28 feet".*

He mainly contended that the registered sale deed was executed in his favour by the first defendant in the year 1986 and therefore, defendant No.1 has no right, title or interest thereafter either to execute GPA in the year 1989 or in turn to execute sale deed in the year 2003. However, there is no dispute regarding the possession of



the plaintiff's over suit schedule property herein. First defendant handed over the possession of the suit schedule property way back in the year 1985 itself under Ex.P16. She received the entire sale consideration in the year 1985 itself. Since the possession of the plaintiffs was not disputed, the Tribunal also granted an order of injunction in favour of plaintiffs restraining interference of defendants with their peaceful possession and enjoyment of the suit schedule property. As the possession of property and original title documents are already handed over by the defendant No.1 as on the date of agreement of sale, she has no right and title to execute registered sale deed in favour of defendant No.2 on 13.3.1986. Defendant No.2 got registered sale deed executed in his favour to defeat the agreement of sale executed by his wife in favour of Zahrunnissa and kept quiet till February 2003, without any valid reason.

33. Appellants relied upon citation in case of **SLP © No.13917/2009** .dated 11.10.2011 in case **Suraj Lamp**



***and Industries Pvt Ltd., Vs State of Haryana and Ors***

in which it was specifically mentioned as below,

*The transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.*

*Any contract of sale, (agreement of sale) which is not registered, would fall short of the requirements under Sections 54 and 55 of the Transfer of Property Act, 1882 and will not confer any title and nor, transfer any interest in the immovable property (except to the limited right granted under section 53(A) of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."*

but in the same judgment it was clearly stated that the judgment is applicable prospectively from 11.10.2011



onwards. This litigation is running from 2003 onwards and the parties relied upon the documents for the years 1985-1986. Plaintiff examined herself as PW1 and examined her mother, the GPA holder as PW2 and brother who is an attester as PW3. All of them clearly stated that in the year 1985, the document was executed in the presence of defendant no.2 and even plaintiff was also present, at the time of execution of Ex.P16. Second defendant mainly contended that GPA and affidavit were forged and once he takes the plea of forgery, it is for him to send the documents to forensic expert, to prove his contention. But he has not examined first defendant, who executed the said documents, nor sent the documents to the expert. It is not in dispute that property was purchased by first defendant in the year 1972 and she stated the same in Ex.P16 and also in the GPA. Therefore, the contention of the second defendant that she lost right over the property, in view of execution of the registered sale deed in the year 1986, cannot be accepted. In the said judgment, it was



specifically mentioned that nothing prevented or affected parties from getting registered deed of conveyance to complete their agreement. In this case, as the first defendant executed agreement way back in the year 1985 by duly receiving the entire sale consideration and also handed over the possession and then executed GPA in the year 1989, it cannot be said that there was no valid transfer of immovable property through agreement of sale or GPA and it clearly confers title on the plaintiffs. Therefore, they are entitled to get registered sale deed in their favour from the first defendant, and thus they are entitled for declaration of title and interest in the suit schedule property, as claimed by them.

34. It was observed in the judgment that the relief of declaration is barred by limitation as initially the suit was filed only for injunction and later the said relief was added, by way of amendment in the year 2008. But the said amended application was allowed on 28.08.2008 itself and it was not challenged by the second defendant before





the higher forums. As such, now he cannot contend that suit is barred by limitation for the relief of declaration.

Accordingly, this appeal is ***allowed***.

It is held that the plaintiffs are entitled to the relief of declaration. In view of the decision reported in *SLP (C) No.13917/2009 dated 11.10.2011*, as it is prospective in nature from 2011 onwards, they are at liberty to obtain a registered deed of conveyance to complete their title.

**Sd/-**  
**(P SREE SUDHA)**  
**JUDGE**

AKV